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EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/823,125
Filing Date: March 30, 2001
Appellant(s): OTERO ET AL.

_____
Nathaniel Levin

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 04/16/07 appealing from the Office action

mailed 10/20/06.

(6) Grounds of Rejection to be Reviewed on Appeal

NEW GROUND(S) OF REJECTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-6 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter i.e., "a human being." The broadest reasonable interpretation of applicant's claimed limitation as a whole encompasses a human being and thus is non-statutory under 35 USC 101.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 101

1.   35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2.   Claims 1-6 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter i.e., "a human being." The broadest reasonable interpretation of applicant's claimed limitation as a whole encompasses a human being and thus is non-statutory under 35 USC 101.

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35

U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under

section 122(b), by another filed in the United States before the invention by the

applicant for patent or (2) a patent granted on an application for patent by another

filed in the United States before the invention by the applicant for patent, except that

an international application filed under the treaty defined in section 351(a) shall have

the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published

under Article 21(2) of such treaty in the English language.

4.   **Claims 1-2, 3, 5 and 8-14 are rejected under 35 U.S.C 102(e) as being**

anticipated by Kane (U.S. Patent 6,317,728).

Re claim 1: Kane discloses a method for computerized trading comprising:

-      A human being using a graphical user interface to enter parameters for a trading

       algorithm to input a trading order into a logic engine (i.e., decision logic, see

       abstract, also see " WealthBuilder also allows customer override and entry of

       trading commands", col.8 lines 20-36).

-      using a first plug-in (i.e., agent) in said logic engine for implementing the trading

       algorithm (see col. 5, lines 5-10).

- inputting data for said order into said logic engine (see abstract).

- processing the order with said logic engine, using said plug-in (see abstract).

- executing said order (see abstract)

- said human being monitoring said order in real time by using said graphical user
  interface (i.e., WealthBuilder also provides a real time internet client allowing users
  to monitor trade execution and position values held so that a customer can feel
  connected to the trading environment. The computer makes the decisions but can
  be monitored remotely, see col.8 lines 20-35).

Re claims 2 and 3: Kane discloses a method wherein the step of inputting a trading
order into a logic engine further comprises inputting an order through an ordering
system (i.e., data acquisition system, see abstract).

Re claim 5: Kane discloses a method wherein the step of executing said order further
comprises outputting said order through an ordering system (col. 3, lines 34-36).

 Re claim 8: Kane discloses an apparatus for computerized trading comprising:

 - a logic engine for processing trading orders (see abstract);

an interface to said logic engine to receive from a human being parameters for a trading
algorithm(data channel, see fig 1, elements 12, 13) and to allow the human being to
monitor said order in real time (i.e., WealthBuilder also provides a real time internet
client allowing users to monitor trade execution and position values held so that a
customer can feel connected to the trading environment. The computer makes the
decisions but can be monitored remotely, see col.8 lines 20-35).

- a first plug-in (i.e., agent) in said logic engine (i.e., decision logic) for implementing the trading algorithm (see col. 5, lines 5-10). Whereby said logic engine processes order received via said interface (see col. 5, lines 2-11); wherein said logic engine, said interface and said first plug-in are software recorded on a computer-readable medium and capable of execution by a computer.

Re claim 9: Kane discloses an apparatus for computerized trading comprising:

- a logic engine (i.e., decision logic) for processing trading orders (see abstract);

- a first interface (i.e., input) to said logic engine for processing orders from a human being parameters for a trading algorithm (i.e., each decision agents representing a respective buy and a respective sell rule, see abstract) and to allow the human being to monitor said order in real time (i.e., WealthBuilder also provides a real time internet client allowing users to monitor trade execution and position values held so that a customer can feel connected to the trading environment. The computer makes the decisions but can be monitored remotely, see col.8 lines 20-35).

- a second interface (i.e., input) to said logic engine for processing orders (see abstract)

- a first plug-in (i.e., agent) in said logic engine for implementing the trading algorithm (col. 5, lines 5-10). Whereby said logic engine processes orders received via either of said first and second interfaces (see col. 5, lines 2-8, also see abstract); wherein said logic engine, said first interface and said second interface, and said first plug-in are software recorded on a computer-readable medium and capable of execution by a computer.

Re claim 10: Kane discloses an apparatus wherein said first interface further comprises an Input driver (i.e., agent, see col. 15, lines 5-15).

Re claim 11: Kane discloses an apparatus wherein said second interface further comprises an exchange driver (i.e., agent, see col. 15, lines 5-15).

Re claim 12: Kane discloses an apparatus wherein said first interface (i.e., input) further comprises an interface to an ordering system (see abstract).

Re claim 13: Kane discloses an apparatus wherein said second interface (i.e., input) further comprises an interface to an ordering system (see abstract).

Re claim 14: Kane further discloses an apparatus wherein said logic engine further comprises a Core Processing Area (i.e., central processing unit, see col. 5, lines 5-10).

Claim Rejections - 35 USC § 103

5.　　　The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6.　　　**Claims 4, 6** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kane (U.S. Patent 6,317,728) in view of Microsoft Computer Dictionary (MCD hereinafter: Microsoft Computer Dictionary 5th edition, page 345).

Re claim 4: Kane discloses a method for computerized trading comprising: the steps of processing trading orders (see abstract). Kane does not explicitly disclose a step of de-

constructing said Complex Order into at least one event and action. However, the method of deconstructing complex order into event/action is old and well known and it a well-taught modular design method in object-oriented modular programming (see Microsoft computer dictionary 5th edition, page 345). Therefore, it would have been obvious to one of ordinary skill in the art to implement this well-taught modular design method in Kane to allow programmers to debug and recover very quickly from program crashes.

Re claim 6: Kane discloses a method for computerized trading comprising:

- A human being using a graphical user interface to enter parameters for a trading algorithm to input a ComplexOrder into a logic engine through an ordering system.

-using a first plug-in (i.e., agent) in said logic engine for implementing the trading algorithm (see col. 5, lines 5-10).

-inputting data for said order into said logic engine (see abstract).

-Kane discloses a method wherein the step of executing said order further comprises outputting said order through an ordering system (col. 3, lines 34-36).

-said human being monitoring said order in real time by using said graphical user interface to enter (i.e., WealthBuilder also provides a real time internet client allowing users to monitor trade execution and position values held so that a customer can feel connected to the trading environment. The computer makes the decisions but can be monitored remotely, see col.8 lines 20-35). However, Kane does not explicitly teach the step of deconstructing said complex order into events and actions. The method of deconstructing complex order into event/action is a well-taught modular design in

object-oriented modular programming (see Microsoft computer dictionary 5th edition,

page 345). Therefore, it would have been obvious to one of ordinary skill in the art to

implement this well-taught modular design method in Kane to allow programmers to

debug and recover very quickly from program crashes.

   For the above reasons, it is believed that the rejections should be sustained.

   This examiner's answer contains a new ground of rejection set forth in section **(9)**

above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer

exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal**

as to the claims subject to the new ground of rejection:

   (1) **Reopen prosecution.** Request that prosecution be reopened before the

primary examiner by filing a reply under 37 CFR 1.111 with or without amendment,

affidavit or other evidence. Any amendment, affidavit or other evidence must be

relevant to the new grounds of rejection. A request that complies with 37 CFR

41.39(b)(1) will be entered and considered. Any request that prosecution be reopened

will be treated as a request to withdraw the appeal.

   (2) **Maintain appeal.** Request that the appeal be maintained by filing a reply

brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of

rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the

other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR

41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be

treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/OJO O OYEBISI/

Examiner, Art Unit 3696

Conferees:

/THOMAS A DIXON/

Supervisory Patent Examiner, Art Unit 3696

Vincent Millin /vm/

Appeals Practice Specialist

A Technology Center Director or designee must personally approve the

new ground(s) of rejection set forth in section (9) above by signing below:

/Wynn W. Coggins/

Director, TC 3600